

United States District Court

NORTHERN

DISTRICT OF

CALIFORNIA

UNITED STATES OF AMERICA

V.

DAVID JOHN HOUGH

CRIMINAL COMPLAINT

CASE NUMBER:

51 04 134 PVT

I, the undersigned complainant being duly sworn state the following is true and correct to the best of my knowledge and belief. On a date unknown but no later than October 21, 2003, in Santa Clara County in the Northern District of California defendant did

knowingly possess material containing an image of child pornography that had been mailed, or shipped, or transported in interstate or foreign commerce by any means, including by computer, in violation of 18 U.S.C. § 2252A(a)(5)(B).

I further state that I am a Special Agent of Immigration & Customs Enforcement and that this complaint is based on the following facts:

SEE ATTACHED AFFIDAVIT

PENALTIES under 18 U.S.C. § 2252A(a)(5)(B):

Minimum Term of Imprisonment: 10 years

Maximum Term of Imprisonment: 20 years;

Supervised Release: 3 years;

Fine: \$250,000; Special Assessment: \$100

Requested bail: Issue no bail warrant / government will request detention

APPROVED AS TO FORM:

Shuana Yen
AUSA YEN

Continued on the attached sheet and made a part hereof: ☒ Yes ☐ No

[Signature]
Signature of Complainant

Sworn to before me and subscribed in my presence,

June 4, 2004

Date

at

San Jose, California

City and State

Patricia V. Trumbull

United States Magistrate Judge

Name & Title of Judicial Officer

[Signature]

Signature of Judicial Officer

FILED
JUN - 4 2004
RICHARD W. WHEAT
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE

**STATE AND NORTHERN DISTRICT
OF CALIFORNIA**

**COUNTY OF SANTA CLARA,
CITY OF SAN JOSE**

**AFFIDAVIT OF ICE SPECIAL
AGENT MALCOLM R.
BOONE IN SUPPORT OF A
COMPLAINT AND AN
APPLICATION FOR AN ARREST
WARRANT**

I, Malcolm R. Boone, a Special Agent of the Department of Homeland Security, Immigration and Customs Enforcement (ICE), being duly sworn, state as follows:

INTRODUCTION

1. I make this Affidavit in support of a complaint charging David John HOUGH with knowingly possessing any book, magazine, periodical, film, videotape, computer disk, or any other material that contains an image of child pornography that has been mailed, or shipped or transported in interstate or foreign commerce by any means, including by computer, or that was produced using materials that have been mailed, or shipped or transported in interstate or foreign commerce by any means, including by computer, in violation of 18 U.S.C. § 2252A(a)(5)(B). I also request that an arrest warrant be issued for David John HOUGH.

AFFILIANT'S BACKGROUND

2. I am a Special Agent with Immigration and Customs Enforcement (ICE) and have been so employed since March of 2003. Prior to the inception of ICE, I had been a Special Agent with the Immigration and Naturalization Service (INS) since May of 2002. I am currently assigned to the San Jose Office. I am responsible for investigations involving the possession and distribution of child pornography. I am further responsible for enforcing federal criminal statutes involving the sexual exploitation of children pursuant to Title 18 United States Code, Section 2251, et seq.

3. During my tenure as a Special Agent, I have participated in investigations of criminal activity, including, but not limited to Child Sexual Exploitation, Fraud, and Immigration Violations and other crimes involving the use of computers. I am a graduate of the 17-week Border Patrol Academy conducted at the Federal Law Enforcement Training Center (FLETC) in Glynco, Georgia. Prior to becoming a Special Agent, I was a Border Patrol Agent assigned to the Campo Station in Campo, California for 7 years. I have a B.A. in Psychology from Catawba College in Salisbury, North Carolina.

RELEVANT STATUTES

4. Title 18, United States Code, section 2252A makes it a crime to knowingly possess, receive or distribute child pornography that has been mailed, shipped or transported in interstate or foreign commerce by any means, including by computer.

5. "Child Pornography" is defined, among other ways, under Title 18, United States Code, section 2256 as "any visual depiction" of "sexually explicit conduct" where:

(A) the production of such visual depiction involves the use of a minor engaging in sexually explicit conduct;

(B) such visual depiction is a digital image, computer image, or computer-generated image that is, or is indistinguishable from, that of a minor engaging in sexually explicit conduct; or

(C) such visual depiction has been created, adapted, or modified to appear that an identifiable minor is engaging in sexually explicit conduct.

PROBABLE CAUSE

6. The following information is based on an investigation conducted by myself, other Special Agents of ICE, and investigators of the Santa Clara County District Attorney's Office. Since this Affidavit is being submitted solely to support a complaint, and an application for an arrest warrant, I have not included every fact of the investigation.

7. A criminal history check reveals that HOUGH is a registered sexual offender. On June 15, 1967, HOUGH was convicted of annoying and molesting minors in violation of Cal. Penal Code § 647.6. On June 28, 2001, HOUGH was convicted in the Superior Court for the County of Santa Clara on two (2) counts of possession of material depicting a minor engaging or simulating sexual conduct, in violation of Cal. Penal Code § 311.11(a). In addition, on June 28, 2001, HOUGH was convicted of violating Cal. Penal Code § 290 by failing to inform law enforcement authorities of his new address, despite being required to do so as a "290 registrant." For this latter conviction, HOUGH was sentenced, on September 18, 2001, to 16 months of imprisonment and three years of parole.

8. On February 18, 2002, HOUGH was released on parole for a period of three years. In the Notice and Conditions of Parole, HOUGH was informed that his parole was subject to the general condition that "You shall not engage in conduct prohibited by law (state, federal, county or municipal)." In addition, because HOUGH was a convicted sex offender, he was subject to special conditions of parole which included the following: "You are not to view, possess or have access to video tapes, films, magazines, or photographs depicting any type of sexual activity or sexually oriented material," and, "You may not possess or view any material that can be considered obscene."

9. On October 20, 2003, a civilian witness utilized HOUGH's computer with HOUGH's permission. While using HOUGH's computer on that date, the witness noticed that the desktop background on the monitor contained images of what appeared to be unclothed minor males. After leaving HOUGH's room, the witness reported the incident to the Clinical Services Specialist for Casa Feliz, the residence where HOUGH and the witness resided. The Clinical Services notified Parole Agent James Davis who then notified Santa Clara County District Attorney's Office Investigator Sharon Donaldson of the incident.

10. On October 21, 2003, Santa Clara County District Attorney's Office Investigator Sharon Donaldson conducted a parole search of suspect David HOUGH's residence located at 525 S. 9th Street, #60, San Jose, CA. Investigator Sharon Donaldson asked HOUGH if she was going to find child pornography on his computer. HOUGH responded by saying that he "had some" (child pornography) on his "D" drive in a folder named "My Boys." Investigator Donaldson then searched that drive and located graphic images of nude prepubescent males in seductive poses. Investigator Donaldson asked HOUGH if anyone else used the computer to which HOUGH responded that aside from himself, only the witness had used the computer to check email and that HOUGH had been present each time. HOUGH further stated that he was responsible for the child pornography and claimed that he used the child pornography for "therapy" by self-inflicting pain to prevent himself from assaulting children. As a result of these findings, HOUGH was placed under state arrest for possession of child pornography and violation of parole.

11. On December 3, 2003, the Silicon Valley Computer Forensics Laboratory conducted a forensics examination of the hard drive of HOUGH's computer. This examination revealed numerous images of what appeared to be underage males engaging in sexual acts. The examination also revealed that HOUGH saved these downloaded images to the C drive under C:\Documents and Settings\Dave\My Documents\ and the D drive under D:\MyBoys\ on his computer. The Forensics Laboratory saved and archived these images to DVD and data tape for further investigation.

12. I have reviewed the images taken from HOUGH's computer and there are approximately one hundred seventy-five (175) images of what appears to be child pornography. An example of one of the images found in HOUGH'S computer is that of one (1) nude prepubescent male performing oral sex on another nude prepubescent male.

13. On May 3, 2004, I interviewed HOUGH while he was incarcerated at Pleasant Valley State Prison in Coalinga, California. HOUGH was read his Miranda rights and agreed to waive his rights and answer questions without a lawyer present by signing Customs Form 4612. During the interview, HOUGH freely admitted to accessing and downloading child pornography to his computer. HOUGH stated he did this by utilizing AT&T as his Internet Service Provider (ISP) to access the Internet. HOUGH also stated that he downloaded a free version of Forte Agent, which is a program that allows the user to access various newsgroups. HOUGH stated that accessing newsgroups was the only method in which he obtained child pornography.


14. At the conclusion of the interview, HOUGH provided a brief oral statement concerning the child pornography images that were present on his computer. HOUGH stated that in 1967, he was arrested and convicted for child molestation. As a result, he was sent to Atascadero Mental Hospital for treatment of sexual disorders. During a portion of his stay, which lasted approximately nine (9) months, HOUGH underwent therapy called "aversive conditioning." HOUGH stated that the "aversive conditioning" consisted of being shown photographs of minor boys and, as HOUGH would become sexually aroused, he would be shocked by electric nodes that had been placed on his body. HOUGH stated that he may have been shocked approximately one thousand (1,000) times in that nine (9) month period. As a result of being subjected to this therapy, HOUGH claimed that he had child pornography on his computer to "aid in continuing aversive conditioning" and would prick himself in the arm with a pin to prevent himself from acting on urges to molest boys. However, HOUGH also stated that he knew that having the images of child pornography was wrong.

14. The forensics examination of HOUGH's computer revealed, among other things, that HOUGH had accessed the newsgroup "alt.binaries.pictures.asparagus" using the AT&T newsgroup server "netnews.worldnet.att.net" and that he had read numerous graphic files with names such as "amateur little boys jerking," indicating that they were child pornography images. Based on my training and by talking to other law enforcement agents and officers, I have learned that "asparagus" is a code term for boys' genitalia.

15. From speaking to a Senior Technical Specialist for AT&T's IP Network Security Group, I have learned that any images downloaded from newsgroups by using AT&T's newsgroup server "netnews.worldnet.att.net," must travel to AT&T's newsgroup server located in Missouri. In this case, HOUGH admitted that he used AT&T as his Internet Service Provider, and that he obtained all of the child pornography images on his computer by downloading images from newsgroups on the Internet. Moreover, the fact that HOUGH used the AT&T newsgroup server to access the "alt.binaries.pictures.asparagus" newsgroup, indicates that HOUGH had his computer configured to use the AT&T newsgroup server. Accordingly, there is probable cause to conclude that the child pornography images that were found on HOUGH's computer were downloaded from newsgroups using the AT&T newsgroup server, and thus those images necessarily traveled through AT&T's server in Missouri and across state lines before coming into HOUGH's possession in San Jose, CA.

CONCLUSION

16. Based on the foregoing, there is probable cause to believe that David John HOUGH is in violation of Title 18, United States Code, section 2252A(a)(5)(B) and as such respectfully request that an arrest warrant be issued for David John HOUGH.


Malcolm R. Boone
ICE Special Agent

Sworn to and subscribed before me on this 4th day of June 2004.


PATRICIA V. TRUMBULL
United States Magistrate Judge